IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPL. NO. 5027 OF 2004.
IN
CRIMINAL APPEAL NO. 1379 OF 2004.

Hamjia Durgya @ Zurbya
Pawar. ..Applicant.

VERSUS.

The State of Maharashtra. ..Respondent.

...

Mr. Milind Deshmukh for the applicant.

Mr. D. R. More, APP for the State.

CORAM: S. B. MHASE &
ANOOP V. MOHTA, JJ.

DATE : DECEMBER 6, 2004.

P.C.:-

1. Heard Mr. Milind Deshmukh for the applicant and Mr. D.R.More, learned APP for the Respondent State. There are two eye witnesses. However, out of them, Pw.5 is disbelieved by the court as is reflected in paragraph No.18 of the judgment. Only eye-witness is the Pw.7-Sonam. She was only 5 yeas of age at the time of incidence though when the evidence was recorded she was of 12 years of age. She is residing with Pw.5, but as has been found that the Pw.5 has improved her statements to the extent that when she was not eye-witness to the incidence and has tried to convert herself as an

eye-witness and the Pw.7 is in the company of such a witness. Thus, the possibility of tutoring the Pw.7 cannot be ruled out.

2. Learned APP tried to point out that there are blood stains on the clothes of the accused having "B" blood group which tallies with the blood group of the deceased. However, from paragraph No.18 itself it is clear that the blood group of the accused is also "B" and he had an injury to his middle finger and Doctor Sonawane who has been examined in this case has admitted that the said blood stains on the clothes of the accused are possible due to the injury to the accused himself. All these circumstances persuade us to suspend the sentence of the accused and grant him bail.

3. Therefore, we pass the following order.

: O R D E R :

The sentence of the applicant - accused in Sessions Case No.41 of 1997 decided on 21.8.2004 (decided by the IInd Additional Sessions Judge, Baramati) is hereby suspended till the final disposal of the appeal. The accused be released on bail of Rs.20,000/- with a like surety. He

can give two sureties for the said amount. During the bail period, the applicant shall report to the Baramati police station on every Sunday at 9.00 to 12.00 a.m.

(ANOOP V.MOHTA, J.) **(S.B.MHASE,J.)**